UNITED STATES
v.
LOUIS WOLK

IBLA 85-682 Decided December 3, 1987

Appeal from a decision of Administrative Law Judge Robert W. Mesch declaring the Poor Folks Mine Nos. 7, 8, and 9 lode mining claims, A MC 129428 through A MC 129430, null and void. Contest A 19996.

Affirmed.

1. Mining Claims: Determination of Validity--Mining Claims: Discovery: Generally

The basic test for determining whether a mining claimant has discovered a valuable mineral deposit on his mining claim is the "prudent man rule." This rule, stated in Castle v. Womble, 19 L.D. 455 (1894), provides that in order for there to be a discovery, there must be exposed within the limits of the claim, minerals of such quality and quantity that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. The "prudent man rule" is complemented by the "marketability test." That is, in order to establish the existence of a valuable mineral deposit, it must be shown that the mineral can be extracted, removed, and marketed at a profit.

2. Evidence: Burden of Proof--Mining Claims: Determination of Validity--Mining Claims: Discovery: Generally

When the Government contests a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge. A prima facie case has been made when a Government mineral examiner testifies that he has examined the exposed workings on a claim and has found the evidence of mineralization insufficient to support a finding of discovery of a valuable mineral deposit. The mining claimant has the ultimate burden of refuting the Government's case by a preponderance of evidence.

3. Mining Claims: Discovery: Generally

Evidence of mineralization which may justify further exploration, but not development of a mine, does not establish the discovery of a valuable mineral deposit.

APPEARANCES: Louis Wolk, pro se; T. Adrian Pedron, Esq., Regional Attorney, Office of the General Counsel, U.S. Department of Agriculture, for the Forest Service.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Louis Wolk appeals from a May 10, 1985, decision of Administrative Law Judge Robert W. Mesch declaring the Poor Folks Mine Nos. 7, 8, and 9 lode mining claims A MC 129428 through A MC 129430, null and void for lack of a discovery of a valuable mineral deposit.

On October 16, 1984, the Arizona State Office, Bureau of Land Management (BLM), at the request of and on behalf of the Forest Service, U.S. Department of Agriculture, instituted contest A 19996 through issuance of a complaint charging that:

A. There are not presently disclosed within the boundaries of the mining claims, nor were there disclosed as of December 31, 1983, minerals of a variety subject to the mining laws, sufficient in quantity, quality and value to constitute a discovery.

B. The land embraced within the claims is nonmineral in character.

The contestee filed a timely answer denying the charge and a hearing was held before Judge Mesch on February 13, 1985, in Phoenix, Arizona.

The Poor Folks Mine Nos. 7, 8, and 9, lode mining claims were located on May 9, 1981. All are situated in secs. 28 and 29, T. 1 N., R. 10 E., Gila and Salt River Meridian, Arizona. The contest complaint states that part of the lands in question are located within the Superstition Wilderness Area, and have been withdrawn from mineral entry since January 1, 1984. 1/

The Government presented its evidence through Howard Wirtz, a Forest Service mining engineer-geologist, who testified that he conducted a mineral examination of the contested claims on February 22, 1984. He was accompanied

1/ We note that evidence adduced at the hearing indicates that as a result of a subsequent boundary change, all of the claims are now totally within the Superstition Wilderness Area (Tr. 30, 31; Exh. 7).

by Wolk, Archie McCune, who was then Wolk's partner, 2/ and Pamela Randall, an employee of BLM's Mesa District Office (Tr. 10). Wirtz, using a map submitted by appellant to BLM, indicated the location of two workings on the Poor Folks Mine Nos. 7 and 9 (Exh. E-2; Tr. 11-12). Wirtz testified that because of the absence of corners or claim boundary lines it was difficult to ascertain whether appellant's working designated W-2 was in fact located within the boundaries of the Poor Folks Mine No. 9 (Tr. 12-13).

Wirtz testified that he collected samples found around the portal of the adit designated W-1, as well as material from a "dog hole" on W-2 (Tr. 19-20). These were areas indicated by Wolk and McCune as sites from which samples should be taken (Tr. 18-19). In both instances the location and sample material was discussed with Wolk. Wirtz stated that there were no other workings that appeared worthy of sampling. He did not observe any exposed mineralization that was worthy of sampling, and the contestee did not request any additional samples (Tr. 20).

The samples were assayed and showed no measurable gold or silver value (Exh. E-6). Wirtz testified that based on his examination of the claims, it was his opinion that a person of ordinary prudence would not be justified expending his labor and means with a reasonable prospect of success, that the minerals material located on the claim could not be mined, removed, and marketed at a profit, and that the lands were not mineral in character (Tr. 31). On cross-examination Wirtz testified that he did not enter the W-1 adit on Poor Folks Mine No. 7 because it did not appear to be safe, but stated that the samples taken from the dump in front of W-1 represented samples of everything that looked to have the possibility of being mineralized (Tr. 35, 36). Wolk testified that a month after the Forest Service geologist had examined the claims, he found a fissure with red ore and quartz, but stated further prospecting would be required to determine the value of the minerals found (Tr. 48, 49). Wolk also testified that he had not done much prospecting on the Poor Folks Mine Nos. 8 and 9 (Tr. 50).

On appeal, appellant claims that his right to question his accusers was denied. He also states that the Forest Service gave him the right to prospect the claims. Finally, he asserts that he has complied with the regulations which require the filing of annual assessment work.

[1] The basic test for determining whether a mining claimant has discovered a valuable mineral deposit on his mining claim is the "prudent man rule." This rule, enunciated in Castle v. Womble, 19 L.D. 455 (1894), states that in order for there to be a discovery, there must be exposed within the limits of the claim minerals of such quality and quantity that a person of

2/ The record shows that McCune was also named as a contestee in the Oct. 16, 1984, contest complaint. McCune received the complaint on Oct. 18, 1984, but filed no timely answer. On Dec. 3, 1984, BLM issued a decision declaring the claims at issue null and void as to the interest of McCune, deeming the charges of the contest complaint as admitted. See Edna Horstmeier, 43 IBLA 33 (1979).

ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. The "prudent man rule" is complemented by the "marketability test." Simply stated, in order to establish the existence of a valuable mineral deposit, it must be shown that the mineral can be extracted, removed, and marketed at a profit. United States v. Coleman, 390 U.S. 599 (1968).

[2] It is well settled that when the Government contests the validity of a mining claim on the basis of lack of discovery of a valuable mineral deposit, it has the burden of going forward with sufficient evidence to establish a prima facie case as to that charge; the mining claimant has the ultimate burden of refuting the Government's case by a preponderance of the evidence. Hallenbeck v. Kleppe, 590 F.2d 852 (10th Cir. 1979); United States v. Springer, 491 F.2d 239, 242 (9th Cir. 1974), cert. denied, 419 U.S. 834 (1974); Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959). A prima facie case had been made when a Government mineral examiner testifies that he has examined the exposed workings on a claim and has found the evidence of mineralization insufficient to support a finding of discovery of a valuable mineral deposit. Foster v. Seaton, supra; United States v. Miller, 91 IBLA 245 (1986); United States v. Jones, 72 IBLA 52 (1983).

Here, through the testimony of Wirtz, the Government clearly established a prima facie case that the land lacked sufficient mineralization to support a valid claim. The burden then shifted to the contestee to produce evidence of a discovery. The record indicates appellant failed to overcome this prima facie showing by a preponderance of evidence.

[3] At most, appellant's evidence merely showed that further exploration might be justified on these claims. Evidence of mineralization which may justify further exploration, but not development of a mine, does not establish a discovery of a valuable mineral deposit. United States v. Miller, supra; United States v. Weekley, 86 IBLA 1 (1985); United States v. Arbo, 70 IBLA 244 (1983); United States v. Jones, supra. From our review of the record, we conclude there is not sufficient evidence of mineralization within any of the claims to warrant a prudent man to expend money and time with reasonable expectation that a profitable mining operation could be developed. See Castle v. Womble, supra. The facts of record fail to show that the minerals on these claims can be extracted, removed, and marketed at a profit. See United States v. Coleman, supra.

We find no merit in appellant's claim that he was denied his right to question his accusers. The hearing transcript shows that he actively participated in the hearing. This participation included his cross examination of the Government witness, and there is no indication that this right was restricted in any way. Appellant asserts that the Forest Service gave him the right to prospect the claims, and that "they are holding my letter." Appellant has not explained these assertions, nor has he shown how they have any relevance to whether there was a discovery of a valuable mineral deposit on his claims. Further, the fact that appellant complied with regulations regarding annual assessment work has no bearing on the question of whether there was a valid discovery.

We therefore conclude that Judge Mesch correctly found the contested mining claims to be invalid because of the lack of discovery of a valuable mineral deposit.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge